

[*Comfort v. Raytheon Engineers & Constructors, Inc.*, 95-ERA-51 \(ALJ Dec. 20, 1996\)](#)
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U.S. Department of Labor
Office of Administrative Law Judges
800 K Street, N.W.
Washington, D.C. 20001-8002

Case No. 95-ERA-51

IN THE MATTER OF:

OTIS C. COMFORT, JR.,
Complainant,

v.

Raytheon Engineers and
Constructors, Inc.
Respondent.

RECOMMENDED ORDER OF DISMISSAL

This matter arises under the employee protection provisions of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. §5851 (the "ERA"), and the implementing regulations at 29 C.F.R., Part 1993. Otis C. Comfort ("Complainant") alleges that he was unlawfully terminated from the electrical department at Watts Bar Nuclear Power Station by Raytheon Contractors, Incorporated ("Respondent"), and was otherwise discriminated against, because he complained to Respondent of alleged quality and safety concerns at the Tennessee Valley Authority's Watts Bar facility.

On December 3, 1995, the parties notified the undersigned that the above matter had been resolved and moved for a stipulated dismissal with prejudice. In response to my order of December 12, 1996, the parties have submitted a copy of the underlying settlement agreement and other documents relating to the settlement of this matter.

The Settlement Agreement provides for the payment of a sum of fifteen thousand dollars (\$15,000.00) in compromise settlement of the Complainant's ERA complaint and includes a General Release. Each party agrees to bear his own attorney fees and costs.

Paragraph 5 of the agreement provides that Complainant shall not disclose the terms of the agreement to anyone who is not a party to the agreement, except as may be required by Court order, or as may be necessary in a proceeding to enforce its terms or to disclose

the amount of the settlement to auditors, accountants, financial advisors, or tax lawyers for legitimate tax reasons, and only then on the condition that they maintain the confidentiality of the information. Paragraph 10, however, provides that nothing contained in the Agreement shall

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be construed to require any act contrary to law and where there is any conflict between a provision of the Agreement and any statute, law, governmental regulation or ordinance, such provision shall be severable.

Construing Paragraphs 5 and 10 in *para materia* I find that the confidentiality provisions of paragraph 5 do not restrict Complainant's right to communicate with any appropriate governmental agency concerning the factual basis underlying any of the complaints settled. Likewise, this provision is read as in no way precluding the Secretary from disclosing under the Freedom of Information Act, 5 U.S.C. § 522 (1988) (FOIA) documents relating to this settlement unless they are exempt from disclosure. See Plumlee v. Alyeska Pipeline Service Co., Case Nos., 92-TSC-7, 10; 92-WPC-6, 92-WPC-7, 92-WPC-8, 92-WPC-10, Sec. Final Order Approving Settlements and Dismissing Cases with Prejudice, Aug. 6, 1993, slip op. at 6. See also Department of Labor regulations, 29 C.F.R. Part 70 (1993).

Paragraph 6 of the Settlement Agreement purports to resolve matters under laws other than the Energy Reorganization Act. The Secretary has previously held that his authority over settlement agreements is limited to determining whether the terms thereof are fair, adequate and reasonable settlement of Complainant's allegation that Respondent violated the ERA. My review of the Agreement is therefore limited accordingly. To the extent that the Agreement resolves issues arising out of or related to Complainant's past employment with Respondent and alleged violations of the ERA, I find the mutual commitments exchanged by the parties to be fair, adequate and reasonable. This order does not, however, constitute approval or disapproval of matters beyond the allowable scope of my review authority. See Poulos v. Ambassador Fuel Oil CO., Inc. Case No. 86-CAA 1, Sec. Order, Nov. 2, 1987, slip op. at 2

Paragraph 11 provides that the Agreement shall be governed by and construed under the laws of Massachusetts. I construe this provision to be inapplicable to the Secretary of Labor or the United District Court under the statute and applicable regulations. See Phillips v. Citizens Ass'n for Sound Energy, Case No. 91 ERA -25, Final order of Dismissal, Nov. 4, 1991, slip op. at 2.

I find that the Agreement, as so construed, is a fair, adequate, and reasonable settlement of the complaint. Accordingly, I recommend that the Settlement Agreement and General Release be approved, and that the complaint be dismissed with prejudice.

Mollie W. Neal
Administrative Law Judge

DATE: DEC 20 1996